

**HAMPTON ZONING BOARD OF ADJUSTMENT  
MINUTES  
June 17, 2010**

**Members Present**

Bill O'Brien, Chairman  
Vic Lessard  
Tom McGuirk  
Bryan Provencal  
Ed St. Pierre (Alternate)

**Others Present**

Joan Rice, Secretary

Chairman O'Brien called the meeting to order at 7:00 p.m.

Chairman O'Brien introduced the members of the Board.

The Pledge of Allegiance was said.

**PETITION SESSION**

**14-10** The petition of Sandra & David Mickee for property located at 76 Woodstock Street seeking relief from Article 4.5.2 to install a generator which will not meet side setback. This property is located at Map 305, Lot 44 in a RA zone.

David Mickee, Petitioner, said he would like to install a standby generator which would allow the sump pump to run. He said there have been problems with high tides and storms that have resulted in basement flooding. The generator would not be visible outside the subject property and is consistent with existing setbacks in the area. Mr. Mickee went through the five criteria and said he felt they had been met.

*Questions from the Board*

Mr. Lessard asked Mr. Mickee about the size of his house. Mr. Mickee replied that it was 3 bedrooms. Mr. Lessard asked if natural gas was used. Mr. Mickee said that it was. Mr. Lessard suggested using a larger generator than the planned 10kW because of the size of the house.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

Chairman O'Brien said the petitioner should check with Bob Charette of the Building Inspectors Office (Electrical Inspector) regarding the location of the generator since the petitioners diagram places it less than 5 feet from the bulkhead opening.

**Moved** by Mr. Lessard and seconded by Mr. Provencal, to grant Petition 14-10.

Chairman O'Brien asked the Board members if they felt the five criteria had been met. The members agreed that they had.

**VOTE:** 5-0-0. Motion passed unanimously.

**15-10** The petition of David & Roberta Vandal for property located at 15 Perkins Avenue seeking relief from Articles 1.3, 4.5.1 and 4.5.2 to rebuild porch on existing footprint with minor modifications to roof line. This property is located at Map 293, Lot 25 in a RB zone.

David and Roberta Vandal, Petitioners, came forward. Mr. Vandel said they have a water problem and they would like to take down walls and windows and modify the roof of their porch. The foundation, deck and stairs will remain untouched. The new roof line will be below the existing roof of the main house and will not hinder the view of neighboring properties. Mr. Vandal went through the five criteria and said he felt they had been met.

#### *Questions from the Board*

Mr. McGuirk asked Mr. Vandal if he had a copy of the variance he received when this property was allowed to go to a second story. Mr. Vandal said he has the plans, but not the variance. Mr. McGuirk stated the time limit on that variance had expired.

#### *Comments from the Audience*

There were no comments from the Audience.

#### *Back to the Board*

Chairman O'Brien said there are three stairs going straight up to the front door. He suggested that the Vandals might want to put a platform within the existing setback and run the stairs sideways (East – West) to the house.

**Moved** by Mr. Lessard and seconded by Mr. McGuirk, to grant Petition 15-10 with the stipulation that there is a platform and stairs going to the side.

Chairman O'Brien asked the members of the Board if they felt the five criteria had been met. The members agreed that they had.

**VOTE:** 5-0-0. Motion passed unanimously.

## **BUSINESS SESSION**

### **Election of Officers**

It was decided to postpone the Election of Officers until a full Board is present.

### **Appointment of Alternates**

Mr. Lessard made a motion to appoint Mr. David Card as an alternate to the Board.

Chairman O'Brien asked if Mr. Card had submitted a letter asking to be considered.

Mr. Lessard said he had not and that he would withdraw his motion. Mr. Lessard will ask Mr. Card to submit said letter.

**Moved** by Mr. Lessard and seconded by Mr. Provencal, to appoint Henry Stoney as an alternate to the Board.

**VOTE:** 4-0-1 (St. Pierre). Motion passed.

### **Adoption of Rules of Procedure**

It was decided to postpone the Adoption of Rules of Procedure until a full Board is present.

### **Adoption of Minutes**

Amendments as follow to the Minutes of May 20, 2010:

Page 4, in the middle of the page, under **Moved** by Mr. Lessard. Should read as follows:

**"Moved** by Mr. Lessard and seconded by Mr. Gebhart, to deny Petition 10-10 as requested and to grant only the ability to build on the existing footprint, no closer to Ocean Boulevard(4.5.1 is denied only for the expansion of 2 feet), the second-story deck and enclosed sun porch with a pitched roof (4.5.2 is approved).

Page 5, at the bottom of the page, under *Questions from the Board*. Should read as follows:

"Mr. St. Pierre asked Attorney Saari if this property was used in the calculations for the number of condos. Attorney Saari responded in the affirmative. Mr. St. Pierre also asked Mr. McGuirk if this change would have affected his prior decision. Mr. McGuirk said yes.

**Moved** by Mr. Lessard and seconded by Mr. McGuirk, to approve the Minutes of May 20, 2010 as amended.

**VOTE:** 4-0-1 (Provençal). Motion passed.

### **Adjournment**

**Moved** by Mr. Provençal and seconded by Mr. McGuirk, that the formal meeting is adjourned and a discussion period would follow.

The formal meeting was adjourned at 7:25 p.m.

### **FURTHER DISCUSSION**

Chairman O'Brien discussed Petition 13-10 from last month which was withdrawn. It had been suggested at the meeting that the Petitioner build two smaller sheds. Chairman O'Brien stated this cannot be done since the Use Regulation (3.1) only allows a single-family home, a garage and one accessory building in the single-family area without a variance.

Chairman O'Brien discussed Petition 10-10 from last month which was denied. At the meeting, Chairman O'Brien stated that he believed the petition was noticed incorrectly since the expansion did not include the sun room. Attorney Ells responded that it was a technical issue and the petition should be taken as a whole. In a later discussion, between Chairman O'Brien and Kevin Schultz, the Building Inspector confirmed it was noticed incorrectly; however, it did not matter in this case since the petition was denied.

Chairman O'Brien discussed Petition 06-10 which came before the Board in March and was approved, with no stipulations, to add a second story. Chairman O'Brien recently observed that the house has been gutted down to the foundation. In the future, he suggested that the Board make it a requirement that when applicants want to add height to a building, they must use 100% of the existing foundation or re-apply for another variance. The intent being that a total rebuild (including foundation) could probably meet or at least come closer to meeting setback requirements.

Mr. McGuirk discussed the notification of abutters - he wants to ensure uniform notification procedures are followed. A condo association should be treated the same way as all other abutters. One notification to a condo association should cover all members of the association - this was not followed in this evening's Petition 15-10 since all condo units at 16 Perkins Avenue were notified. Chairman O'Brien was asked to speak to Kevin Schultz regarding this subject to ensure only one notification to a condo association, not all members of the association.

Mr. McGuirk said that neighbors had been calling him about campers on James Street. He said the Board of Selectmen gave a temporary permit for eight large RV campers to park there over the Memorial Day weekend. They are only allowed to give a temporary permit

for something if it is allowed in a single-family zone and not contrary to the zoning ordinance. The Board of Selectmen should have advised the applicant that a variance must be obtained to the zoning ordinance from the ZBA. In this manner, proper notification would have been given to all abutters, via a registered letter, and thus afforded the abutters the opportunity to speak on this variance request. Mr. McGuirk also suggested obtaining outside counsel on this matter. Chairman O'Brien was asked to speak to the Town Attorney to discuss the ability of the Board of Selectmen to grant a permit when it is against the ordinance or, at least, require the applicant to also obtain ZBA approval.

Mr. Lessard discussed the Mitchell land. He said land had been taken away from them. They now have no setbacks. Mr. McGuirk said the land issue needs to be resolved. He expressed concern that some town officials and area commission officials are suggesting no setbacks. Instead, these individuals should be advising the landowner to come to the Zoning Board as soon as possible to seek a setback variance to the zoning ordinance. Chairman O'Brien was asked to discuss this matter with the Town Attorney.

There being no further business, this section of the meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Joan Rice  
Secretary